

BEFORE THE  
TENNESSEE STATE BOARD OF EQUALIZATION

*In Re:* JRC Trucking Co. )  
 Personal Property Account No. P-073333 ) Shelby County  
 Tax years 2004, 2005, 2006 )

INITIAL DECISION AND ORDER

### Statement of the Case

The Shelby County Assessor of Property ("Assessor") has valued the subject property for tax purposes as follows:

TAX YEAR	APPRAISAL	ASSESSMENT
2004	\$1,210,300	\$363,090
2005	\$1,403,100	\$420,930
2006	\$ 251,200	\$ 75,360

On February 28, 2005, Polo Transportation, Inc. – d/b/a JRC Trucking Co. (“JRC”) – filed an appeal of the 2004 assessment with the State Board of Equalization (“State Board”). The State Board received another appeal on behalf of JRC concerning the valuation of the subject property for 2006 on August 4, 2006. Later, on November 22, 2006, JRC appealed directly to the State Board pursuant to Tenn. Code Ann. section 67-1-1005(b) from a back assessment/reassessment of the subject property for tax year 2005.

The undersigned administrative judge convened a hearing of these consolidated appeals on June 27, 2007 in Memphis. The taxpayer was represented by Theodore T. (Ted) Kitai, Esq., of The Bogatin Law Firm, PLC (Memphis). John Zelinka, Esq., counsel for the Assessor, appeared on her behalf. Mr. Zelinka was accompanied by the Assessor's Audit Manager, Eric Beaupre, CPA, and Director of Finance, Gwendolyn Cranshaw, CPA. Also in attendance was Neill Murphy, CPA, Director of Tennessee Operations of the certified public accounting firm Mendola & Associates, LLC.

### Findings of Fact and Conclusions of Law

The property in question is located in JRC's place of business at 3141 Farrisview in the city of Memphis. In tax year 2004, the company failed to file a tangible personal property schedule with the Assessor's office by the March 1 deadline established in Tenn. Code Ann. section 67-5-903(b). Consequently, the Assessor made a "forced assessment" on the account in the amount shown above. The taxpayer did not make complaint to the Shelby County Board of Equalization before the June 30, 2004 deadline, but did file an appeal with the State Board in



time for possible acceptance under the "reasonable cause" provision of Tenn. Code Ann. section 67-5-1412(e). The case was set to be heard before Administrative Judge Mark J. Minsky on August 31, 2005; but in view of a pending audit of the account for tax years 2003 through 2005 by Mendola & Associates, he converted the scheduled hearing to a pre-hearing conference. The Assessor's representative moved to dismiss JRC's appeal (with respect to tax year 2004) for lack of jurisdiction.

In his PRE-HEARING CONFERENCE ORDER of September 19, 2005, Judge Minsky directed JRC to submit receipts for payments of the undisputed portions of the city and county taxes on the subject property. On October 20, 2005, due to the taxpayer's noncompliance with the terms of that order, Judge Minsky entered an ORDER HOLDING APPEAL IN ABEYANCE.<sup>1</sup> Upon receipt of evidence purporting to show compliance, Judge Minsky vacated that order on November 2, 2005.

Meanwhile, based presumably on the information reported by the taxpayer on its 2005 personal property schedule, the Assessor had appraised the subject account for tax year 2005 at a relatively modest \$18,100.

In May of 2006, while the audit was still in progress, the taxpayer amended its previously-filed personal property schedule for that tax year. On August 4, 2006, the taxpayer appealed the Assessor's apparent refusal to accept its amended schedule to the State Board pursuant to Tenn. Code Ann. section 67-5-903(e)

The audit findings were issued by Mr. Beaupre on August 25, 2006. The audit resulted in no change of the Assessor's (forced assessed) values for tax years 2003 and 2004. However, on September 28, 2006, the Assessor issued notice of a back assessment/reassessment which dramatically raised the 2005 assessment of the subject property from \$5,430 to \$420,530.

On November 13, 2006, the undersigned administrative judge entered a NOTICE OF HEARING of the taxpayer's 2004 and 2006 appeals.<sup>2</sup> At the request of Mr. Kitai, that hearing (scheduled for December 15, 2006) was continued. But in his ORDER GRANTING REQUEST FOR CONTINUANCE (dated December 11, 2006), the administrative judge noted that:

After entry of the NOTICE OF HEARING on November 13, 2006, the taxpayer also filed with the State Board of Equalization an appeal from a back assessment/reassessment of the subject property for tax year 2005. For the convenience of the parties, that appeal will be consolidated with these appeals relative to tax years 2004 and 2006. **However, according to the records of the Shelby County Trustee and city of Memphis Treasurer, a**

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<sup>1</sup>See Tenn. Code Ann. section 67-5-1512(b)(1)(C).

<sup>2</sup>Unbeknownst to the administrative judge, less than one week earlier, the Assessor had *reduced* the valuation of the subject property for tax year 2006 from \$1,196,700 to \$251,200. This action was apparently based on a review of additional documentation submitted by JRC in response to the audit. The taxpayer's appeal with respect to 2006 will be treated as a protest of the "new" value specified in the assessment change notice dated November 7, 2006.



substantial portion of the 2003 taxes on the subject property remains unpaid. Tenn. Code Ann. section 67-5-1512(b)(1)(B) and (C) would appear to preclude any hearing of the taxpayer's 2004—2006 appeals until and unless the accrued delinquency for the prior tax year has been cured.<sup>3</sup> In addition, the taxpayer must have paid at least the undisputed portion of the taxes on the subject property for the tax years under appeal. [Emphasis added.]

Further, during its 2007 session, the Tennessee General Assembly amended Tenn. Code Ann. section 67-5-1512(b)(1)(B) by adding the following sentence:

Failure to pay such undisputed portion of the tax and/or any other property tax delinquency that has accrued on that property by the time of hearing shall result in the appeal being dismissed without any further right to administrative appeal.

Acts 2007, Public Chapter No. 332, section 1. This act, which took effect upon becoming law, was signed by Governor Phil Bredesen on June 4, 2007.

The aforementioned delinquency, it turned out, was still unresolved as of June 27, 2007. Before the undersigned administrative judge on that date, Mr. Zelinka renewed the Assessor's motion to dismiss JRC's 2004 appeal. Inasmuch as his client had elected not to attend the scheduled hearing, Mr. Kitai could not oppose that motion. Nor, because of the burden of proof on the taxpayer in these proceedings under State Board Rule 0600-1-.11(1), was Mr. Kitai in a tenable position to pursue JRC's appeals from the back assessment/reassessment for tax year 2005 or the (revised) assessment for tax year 2006.

Respectfully, even assuming that the quoted act of the legislature would not itself mandate dismissal of these appeals, the administrative judge is compelled under these circumstances to reach the same result.

#### Order

It is, therefore, ORDERED that these appeals be dismissed.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that

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<sup>3</sup>The forced assessment of the subject property for tax year 2003 was not timely appealed by JRC. Although the audit of this account included that tax year (as well as 2004 and 2005), it did not “reopen” tax year 2003 for review by the State Board because the Assessor's original value was never changed.



the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or

2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 20<sup>th</sup> day of July, 2007.

*Pete Loesch*

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PETE LOESCH  
ADMINISTRATIVE JUDGE  
TENNESSEE DEPARTMENT OF STATE  
ADMINISTRATIVE PROCEDURES DIVISION

cc: Theodore T. (Ted) Kitai, Attorney, The Bogatin Law Firm  
John Zelinka, Attorney, Counsel for the Assessor  
Tameaka Stanton-Riley, Appeals Manager, Shelby County Assessor's Office

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